

12983 Mosher PLT



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-197626

DATE: February 28, 1980

MATTER OF: Patrick L. Murray

DIGEST: A former member of the Air Force was *ACC 00036* separated on June 1, 1976. After separation he received pay for the month of June 1976 which was deposited directly to his checking account and credit union account resulting in an erroneous payment. Waiver cannot be granted, since the former member should have been aware of the erroneous payments upon examination of his bank statement and failure to make inquiry to the Air Force imputes to him partial fault in not questioning the unexplained deposits.

The issue presented in this case upon an appeal of our Claims Division's ~~denial of a request for waiver is~~ *of debit* whether waiver of erroneous payments of pay and allowances deposited to a person's bank account and credit union account by the Air Force after the member was separated from the Air Force may be waived under 10 U.S.C. 2774 (1976) in the circumstances described. The answer is no since the recipient of the erroneous payment should have known or with reasonable diligence could have observed from an examination of his bank statement that he had received erroneous payments and should have brought the matter to the attention of appropriate Air Force officials and been prepared to refund the amount erroneously paid.

Mr. Patrick L. Murray, a former member of the Air Force, was separated from the Air Force in Alaska on June 1, 1976. At the time of his separation he was due \$72.89 which was paid. Subsequent to his separation, he received a midmonth payment of \$330.43 and an end-of-month payment of \$330.15 which were deposited by the Air Force directly in his bank checking account. Further, his former class S allotment for \$187.59 was paid to his account at a credit union for a total of \$775.28 erroneously paid. The error was discovered by the Air Force in July 1976 and notification of the

~~008804~~ 111675

error was sent to Mr. Murray by letter dated September 28, 1976, from the Air Force Accounting and Finance Center.

Mr. Murray claims that he was unaware of the erroneous payments since the amounts were deposited directly to his bank account and his credit union and he received no final leave and earnings statement from the Air Force after his separation. He also asserts that his bank statement for the period concerned showed an overage which he checked with the bank and was informed that the bank statement was correct. He states that he then assumed that the overage was the result of "rounding off" by him and his wife when writing checks.

Mr. Murray also states that since he remained in Alaska upon separation from the Air Force and did not use his travel and transportation entitlements back to his home of record, he saved the Government money and for that reason his debt should not be collected.

Subsection 2774(a) of title 10, United States Code (1976), provides in pertinent part that a claim against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, the collection of which "would be against equity and good conscience and not in the best interest of the United States," may be waived in whole or in part. Subsection 2774(b) further provides that the Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority to waive any claim;

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim \* \* \*"

"Fault," as used in this subsection is considered to exist if it is determined that the member should have known that an error existed but failed to take action to have it corrected. 4 C.F.R. 91.5 (1979). Thus, if

B-197626

the member has records which, if reviewed, would reveal the error, but he fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. See 56 Comp. Gen. 943 (1977); and B-193831, July 20, 1979.

It is not unusual for employees of the Government or members of the uniformed services to have their regular pay sent directly to a bank checking account or to make allotments for a portion of their pay to be sent directly to a thrift institution. Mr. Murray acknowledges that he received statements from his bank concerning the status of his checking account which indicated more money had been deposited than he could account for. We also assume that statements of the status of his credit union account were available to him which should also have alerted him to the possibility of an erroneous deposit having been made to his credit union account.

In these circumstances Mr. Murray should have been aware of the strong possibility that excess amounts had been deposited to his accounts by the Air Force. Therefore, we conclude that he was not without fault in the matter for not bringing the possibility of erroneous payments having been made to the attention of proper Air Force officials.

Also, the fact that Mr. Murray chose to remain in Alaska upon discharge and thus may not have used travel and transportation entitlements does not entitle him to retain the erroneous pay and allowances he received.

Accordingly, the action taken by our Claims Division denying waiver is sustained.



FOR THE Comptroller General  
of the United States